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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,888	05/31/2005	Thomas R. Young	63-000210US	1367

22798

7590

03/30/2009

QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.

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EXAMINER

KALLIS, RUSSELL

ART UNIT

PAPER NUMBER

1638

MAIL DATE

DELIVERY MODE

03/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/536,888	Applicant(s) YOUNG ET AL.
Examiner RUSSELL KALLIS	Art Unit 1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 09 March 2009. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1,2,9,15,16,31-33,39,43,66,69,70,77 and 97.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Russell Kallis/
Primary Examiner, Art Unit 1638
March 25, 2009

Continuation of 11, does NOT place the application in condition for allowance because: Applicant has not brought the claims into a condition for allowance and has presented arguments that fail to address the specific points raised in the final rejection and are duplicative of those previously filed. Nonetheless, it is important to note that Applicant elected Group IV initially with traverse but did not present any arguments in the subsequent response where a traversal would be proper. However, Applicants' arguments and evidence, which supports a non-elected Group, is drawn to increasing carotenoid accumulation in a pineapple plant transformed with a DNA from the carotenoid biosynthetic pathway. Applicants' interpretation of claim 1, and related claims, is narrow and fails to acknowledge that there is no recitation in the claims that the polypeptide is expressed, and thus the claim reads upon a pineapple plant comprising a piece of DNA wherein the DNA could be a portion or full length taken from a cDNA encoding a carotenoid biosynthetic polypeptide that is in sense or antisense orientation or is a RNAi construct. It is important to note that in the manner in which Applicant interprets the claims, the claims would be drawn to a non-elected invention and would be withdrawn. However, the Examiner has a broader view of the claims as currently amended. Applicants' attention is directed to currently pending and examined claims 1 and 69, the defining limitation recites 'wherein said carotenoid biosynthetic polypeptide expression regulator comprises at least one nucleic acid segment that encodes at least one carotenoid biosynthetic polypeptide'. The only requirement of the claim limitation is that the nucleic acid segment be from the coding region and as stated previously there is no recitation that the polypeptide is expressed in the cell. There are no non-prophetic examples in the specification or in the prior art of anyone successfully using an antisense strategy, RNAi or sense overexpression strategy to reduce the level of carotenoids in a pineapple plant. The evidence presented by the Examiner addresses the unpredictability in using RNAi, antisense, or sense oriented DNA to reduce the activity of an carotenoid biosynthetic enzyme in plants. No further arguments are presented because Applicants' remarks are largely duplicative of those previously filed and essentially have no bearing upon the invention of elected Group IV. Finally Applicant has indicated in their remarks that 39, 43, and 97 were cancelled (since they were not included in the list of pending claims), yet the claims presented, list those claims as currently pending. The office will treat those claims as currently pending, should Applicant choose to cancel those claims at a later date, and treat the remarks as an inadvertent error.